IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 566 OF 2003

Mrs. Reena Afonso,
2nd Floor, Flat No.12,
Sapana Plaza,
Ascanio Costa Road,
Margao, Goa. ... Petitioner

versus

1. State of Goa,
   Through
   Director of Education
   18th June Road,
   Sushila Building
   Panaji - Goa.

2. The Principal,
   Vidya Vikas Mandals,
   R.M.S. Higher Secondary School,
   Tansor, Comba, Margao.

3. The Manager,
   Vidya Vikas Mandals,
   R.M.S. Higher Secondary School,
   Gopika Co-operative Society,
   Minguel Loyola Furtado Road,
   Margao, Goa.

4. The President,
   Vidya Vikas Mandals,
   R.M.S. Higher Secondary School,
   Kare House, Near Cine Metropole,
   Margao, Goa.

5. Mrs. Jamuna Murthy,
   Vidya Vikas Mandals,
   R.M.S. Higher Secondary School,
   Tansor, Comba, Margao.

6. President
   Administrative Tribunal,
   Panaji - Goa ... Respondents

Mr. J. Godinho, Advocate for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Ms. S. Sabnis, Additional Government Advocate for Respondent No.1.

Mr. P. P. Singh, Advocate for Respondent Nos.2 to 5.

CORAM : SMT.NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 17TH FEBRUARY, 2004.

ORAL JUDGMENT(PER P.V.HARDAS, J.)

Ordinarily, a Petition assailing the Judgment of the Tribunal ought to be placed for hearing before a learned Single Judge but in view of the prayer clause (a) seeking for issuance of a writ of mandamus, the Petition is taken up by the learned Division Bench for hearing.

2. Rule. By consent of parties made returnable forthwith.

3. This Petition under Article 226 of the Constitution of India prays for the issuance of a writ of certiorari questioning the correctness of the Judgment dated 18th August, 2003, rendered by the Administrative Tribunal, Panaji, Goa, in Education Appeal No.50/2003 and prays for issuance of a writ of mandamus directing the Respondents to consider the Petitioner as a regular

teacher Grade I in English(General Stream). The Petitioner came to be appointed in the year 1987 in the Vidya Vikas Mandals, Higher Secondary School initially on lecture basis. Thereafter, the Petitioner came to be appointed as a Part Time Teacher in General Stream(Vocational Stream). Thereafter, in the year 1994, the Petitioner was appointed as a Double Part Time Teacher. This appointment continued till the 3rd October, 2001, when the Petitioner was asked to conduct classes of one Mr. Patrick Dias on lecture basis in view of the voluntary retirement of the said Mr. Patrick Dias.

4. The Management of the Respondent School issued an advertisement on 5th January, 2002, inviting applications for the post of Grade I Teacher in English. The upper age limit for the said advertisement was said to be 40 years and the qualifications prescribed were MA IInd Class in English with B.Ed. On 8th January, 2002, pursuant to the advertisement, the Petitioner applied and was selected. Pursuant to the selection of the Petitioner, the offer of appointment was given to the Petitioner by the letter of the Management dated 9th January, 2002. In the said offer of appointment, the Petitioner was intimated that her appointment was purely on temporary basis till the last working day of the academic year 2001-2002 as per the NOC received from the Directorate of Education. She was also informed that her

appointment was subject to the approval of the Directorate of Education. On receipt of the offer of appointment, the Petitioner by her letter dated 10th January, 2002, addressed to the Manager of the R.M.S. Higher Secondary School, refused to accept the offer since the appointment was only till the last working day of the academic year, with no assurance that she would be able to continue in the next academic year. Thereafter, by her subsequent letter dated 11th January, 2002, the Petitioner accepted the offer of appointment and withdrew the letter dated 10th January, 2002. The Management, it appears had written to the Directorate of Education seeking approval for filling up the post created on account of the resignation of Mr. Patrick Dias till the end of the academic year 2001-2002. The NOC accordingly was issued by the Assistant Director of Education(PLG) by letter dated 12th August, 2002.

5. In view of the appointment of the Petitioner till the academic session 2001-2002, a fresh advertisement was issued and Respondent No.5 came to be selected and appointed. The Petitioner had questioned the appointment of Respondent No.5 in this Court by filing a Writ Petition No.225/2002, which came to be withdrawn by the Petitioner in order to avail the alternate remedy. In furtherance to the withdrawal of the Petition, the Petitioner filed an

Appeal before the Administrative Tribunal which was registered as Education Appeal No.50/2003 challenging her termination. The Administrative Tribunal by its Judgment dated 18th August, 2003, dismissed the Appeal principally on the ground that the Petitioner had been issued with the Appointment Order which clearly indicated to the Petitioner that her appointment was on temporary basis till the end of the academic session. The Petitioner has thus filed the present Petition challenging the aforesaid Judgment of the Administrative Tribunal and has staked her claim for being declared as a permanent teacher.

6. Mr. J. Godinho, learned Counsel appearing on behalf of the Petitioner has admitted before us that the relief of the Petitioner being declared as a permanent teacher would arise for consideration only in the event this Court was to set aside the Order of the Administrative Tribunal. The learned Counsel appearing on behalf of the Petitioner has urged before us that a permanent vacancy had arisen on account of the resignation of Mr. Patrick Dias. It is also urged before us that undisputedly, the Petitioner was possessing the requisite qualifications for being appointed as a Grade I teacher. According to the learned Counsel appearing on behalf of the Petitioner, the Petitioner was selected and came to be appointed and the Directorate of Education could not have

directed the Management to appoint the Petitioner only till the end of academic session. In view of this, it is urged that the Order of appointing the Petitioner deserves to be struck down and the Petitioner be declared as having been appointed to a permanent post on permanent basis.

7. Mr. P. P. Singh, learned Counsel appearing on behalf of Respondent Nos.2 to 5 has contended that the Petitioner had been appointed on temporary basis till the end of the academic session and which was not questioned by the Petitioner. The Petitioner had also not questioned the issuance of the second advertisement and thus, the Petitioner cannot now question the offer letter of appointment appointing the Petitioner on temporary basis.

8. We have given our anxious consideration to the rival submissions advanced before us. Undisputedly, the vacancy had arisen on 11th July, 2001, on account of the resignation of Mr. Patrick Dias. The vacancy was accordingly advertised and the Petitioner was selected after she had applied for the said post. The offer of appointment clearly stated that the appointment of the Petitioner was on purely temporary basis till the last working day of the academic year 2001-2002. The Directorate of Education had also given its approval on the basis of such a request made by the Management of the

School. This is not a case where the Directorate of Education had directed the Management to appoint the Petitioner only till the last working day of the academic year 2001-2002. The Petitioner had accepted the offer of appointment and was well aware that she was appointed only on temporary basis till the last working day of the academic year. In such circumstances, according to us, the Administrative Tribunal has rightly come to a conclusion that the termination of the services of the Petitioner by passage of time as stated in the Appointment Order was according to law. Even before us, no rule has been pointed out which prohibited the Management from appointing a teacher on temporary basis though, the vacancy was a permanent vacancy.

9. In view of this, we do not find any infirmity whatsoever in the reasoning of the Administrative Tribunal in rejecting the Appeal of the Petitioner. That being the position, according to us, the Petition is devoid of any merit and deserves to be dismissed. Since the Judgment of the Administrative Tribunal dismissing the Education Appeal filed by the Petitioner is maintained, the other prayer for declaring the Petitioner as a permanent teacher does not arise for consideration.

10. Writ Petition No.566/2003 is accordingly dismissed. Rule discharged with no order as to costs.

SMT.NISHITA MHATRE, J.

P. V. HARDAS, J.

RD.